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May 19, 2000

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

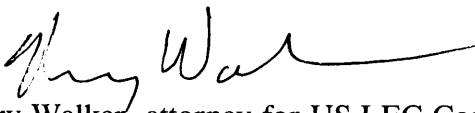
**Re: Petition for Arbitration of an Interconnection Agreement Between BellSouth
Telecommunications, Inc. and US LEC of Tennessee, Inc. Pursuant to the
Telecommunications Act of 1996
Docket No. 00-00053**

Dear David.

Enclosed herewith are the original and thirteen copies of US LEC of Tennessee, Inc.'s Motion to defer further proceedings and also US LEC of Tennessee, Inc.'s response to BellSouth in the above-captioned proceeding.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker, attorney for US LEC Corp.

HW/nl
Enclosure
cc: Parties

BEFORE THE TENNESSEE REGULATORY
Nashville, Tennessee

IN RE: PETITION FOR ARBITRATION OF)	
AN INTERCONNECTION AGREEMENT)	
BETWEEN BELL SOUTH)	
TELECOMMUNICATIONS, INC, AND US)	
LEC OF TENNESSEE, INC. PURSUANT TO)	DOCKET NO. 00-00053
SECTION 252(B) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	
)	

MOTION OF US LEC OF TENNESSEE INC.
TO DEFER FURTHER PROCEEDINGS

US LEC of Tennessee Inc. ("US LEC") hereby moves the Tennessee Regulatory Authority ("TRA") to defer further proceedings in this docket for ninety (90) days. In support of its motion, US LEC states as follows:

1. BellSouth Telecommunications, Inc. ("BellSouth") initiated this docket by filing a petition (the "Petition") to arbitrate unresolved issues in the interconnection agreement between BellSouth and US LEC pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act") on January 25, 2000. Pursuant to § 252(b)(3), US LEC may file a response to BellSouth's Petition within twenty-five (25) days.

2. US LEC does not desire to arbitrate the terms and conditions of an interconnection agreement with BellSouth, but would prefer to opt into the terms and conditions of an approved

interconnection agreement between BellSouth and another competitive local exchange carrier (“CLEC”) pursuant to § 252(i).

3. Accordingly, on February 10, 2000, US LEC and BellSouth filed an “Agreed Motion for Extension of Time” to extend by ninety (90) days the time for US LEC to file a response to the Petition. US LEC believed that new interconnection agreements between BellSouth and other CLECs containing terms and conditions acceptable to US LEC would in all likelihood be filed with the TRA and approved pursuant to § 252(e) within that ninety day period. On February 29, 2000 the TRA granted the requested extension.

4. Although the TRA has recently resolved three arbitration proceedings (NEXTLINK, Time Warner, and ICG) and has nearly completed a fourth (ITC Delta^Com), none of those agreements has yet been filed with the TRA.

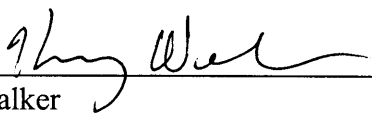
5. US LEC believes that it is likely that one of these interconnection agreements will be filed with the TRA in the near future and will contain terms and conditions that are acceptable to US LEC.

6. In light of the likelihood that an interconnection agreement with terms and conditions acceptable to US LEC will be filed with the TRA in the near future, US LEC submits that it would be wasteful and duplicative to devote the TRA’s and the parties’ resources to further proceedings in this docket at this time. Accordingly, US LEC requests that the TRA again defer further proceedings in this docket, including discovery and scheduling of a hearing, for ninety additional

days and hereby agrees to extend by an additional ninety days the statutory deadline for the resolution of this proceeding.¹

Respectfully submitted,

BOULT, CUMMINGS, CONNERS &
BERRY, PLC

By: 
Henry Walker
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363

Attorney for US LEC OF TENNESSEE INC.

Dated: May 19, 2000

¹ BellSouth has not, at this time, agreed to this request. Therefore, US LEC has today filed a response to the BellSouth Petition. The motion seeks to defer additional proceedings.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via hand delivery, to the following counsel of record on this the 19 day of May, 2000.

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-3300



Henry Walker

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: PETITION FOR ARBITRATION OF)	
AN INTERCONNECTION AGREEMENT)	
BETWEEN BELL SOUTH)	
TELECOMMUNICATIONS, INC, AND US)	DOCKET NO. 00-00053
LEC OF TENNESSEE, INC. PURSUANT TO)	
SECTION 252(B) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

**US LEC OF TENNESSEE INC.'S RESPONSE
TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR ARBITRATION
AND NEW MATTERS RAISED BY US LEC**

Respondent US LEC of Tennessee Inc. ("US LEC") hereby responds to the "Petition for Arbitration of an Interconnection Agreement Between BellSouth Telecommunications, Inc. and US LEC of Tennessee Inc.," filed by BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Section 252 (b) of the Telecommunications Act of 1996. In response to the Petition, US LEC states as follows:

A. STATEMENT OF FACTS

1. US LEC admits the allegations of paragraph 1 of the Petition.
2. US LEC admits the allegations of paragraph 2 of the Petition.
3. US LEC admits the allegations of paragraph 3 of the Petition.
4. US LEC admits the allegations of paragraph 4 of the Petition.

5. US LEC admits the allegations of paragraph 5 of the Petition.
6. US LEC admits the allegations of paragraph 6 of the Petition.
7. US LEC admits the allegations of paragraph 7 of the Petition.

B. JURISDICTION AND TIMING

8. US LEC admits in part and denies in part the allegations of paragraph 8 of the Petition. The allegations are correct as of the date of the filing of the Petition. The parties previously agreed, however, to a 90 day extension of the deadline for a decision by the Tennessee Regulatory Authority (“TRA”).

C. STANDARD OF REVIEW

9. US LEC admits the allegations of paragraph 9 of the Petition.

D. ISSUES FOR ARBITRATION

10. US LEC admits that resolved issues between US LEC and BellSouth are reflected in Exhibit B attached to the Petition and that some of the unresolved issues are set forth in the Petition. US LEC denies the remaining allegations of paragraph 10 of the Petition.

ISSUES FOR ARBITRATION

ISSUE ONE

11. US LEC incorporates by reference herein paragraphs 1-10 of this Response.

12. **BellSouth’s position:** US LEC admits that BellSouth accurately states BellSouth’s position and proposed language with regard to Section 5.1 of the Interconnection Agreement.

13. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Section 5.1 of the Interconnection Agreement. US LEC further states that this issue is appropriate for Section 252 arbitration. Section 252(b)(4)(C) provides that "a state commission shall resolve each issue set forth in the petition and the response." BellSouth set forth this issue in its Petition and cannot be permitted both to raise an issue in a Section 252 arbitration petition and to assert that the same issue is not appropriate for arbitration. If BellSouth believed that this issue was not appropriate for arbitration, BellSouth should not have raised the issue in its Petition. Moreover, Section 252(e)(3) expressly provides that "nothing in this section shall prohibit a state commission from establishing or enforcing other requirements of State law in its review of an agreement."

14. US LEC's right to have its name and logo appear on the cover of BellSouth's White Page and Yellow Page directories in the same size and manner as BellSouth's name and logo is based upon a combination of state and federal law.

15. TRA Rule 1220-4-2-.15 provides that "the name of the telephone utility . . . shall appear on the front cover" of the telephone directory.

16. The TRA rules thus require that US LEC's name appear on the cover of the directory along with the names of other local exchange carriers offering service in that area.

17. Since BellSouth places its name and logo on the directory cover, federal law requires non-discriminatory treatment of US LEC. Therefore, US LEC's name and logo should appear on the cover in the same size and in the same manner as the BellSouth name and logo.

18. The Tennessee Regulatory Authority resolved this same issue against BellSouth in a Declaratory Order, *In re: Petition of AT&T Communications of the South Central States, Inc. for a Declaratory Order as to the Applicability of T.C.A. §§ 65-4-104, 65-4-114(1), 65-4-117(3) and 65-4-122(c), and Rule 1220-4-2-.15 to Telephone Directories Published and Distributed on behalf of BellSouth Telecommunications, Inc. Containing the Names and Telephone Numbers of Customers of AT&T Communications of the South Central States, Inc.*, Docket No. 96-01692 (March 19, 1998) (“*TRA Directory Order*”). The TRA ruled:

in the publication of these directory listings on behalf of BellSouth [Telecommunications] which contain the listings of local telephone customers of AT&T and other competing local exchange providers, BAPCO must provide the opportunity to AT&T to contract with BAPCO for the appearance of AT&T’s name and logo on the cover of such directories under the same terms and conditions as BAPCO provides to BellSouth [Telecommunications] by contract. Likewise, BAPCO must offer the same terms and conditions to AT&T in a just and reasonable manner.

TRA Directory Order at 8.¹

ISSUE TWO

19. US LEC incorporates by reference herein paragraphs 1-18 of this Response.

¹ BellSouth Advertising & Publishing Corporation (“BAPCO”) is an affiliate of BellSouth Telecommunications that publishes directories on behalf of BellSouth Telecommunications. *See TRA Directory Order* at 7. The TRA found that “[a]lthough BAPCO is not a public utility, by virtue of BAPCO’s contract ... with BellSouth regarding the publication of basic White pages directory listings, to the extent that BAPCO acts on behalf of BellSouth in providing such directories, BAPCO is bound by this declaratory order.” *TRA Directory Order* at 8 n.10.

20. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Section 5.6 of the Interconnection Agreement.

21. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Section 5.6 of the Interconnection Agreement. US LEC further states that this issue is appropriate for Section 252 arbitration. Section 252(b)(4)(C) provides that "[t]he state commission shall resolve each issue set forth in the petition and the response." BellSouth set forth this issue in its Petition and cannot be permitted both to raise an issue in a Section 252 arbitration petition and to assert that the same issue is not appropriate for arbitration. If BellSouth believed that this issue was not appropriate for arbitration, BellSouth should not have raised the issue in its Petition.

22. BellSouth is paid on a per-listing basis for subscriber listing information ("SLI") that BellSouth provides to third party publishers, including SLI relating to US LEC's customers. Upon information and belief, BellSouth does not incur any incremental cost in providing US LEC's SLI to third party publishers along with BellSouth's SLI. Accordingly, US LEC, and not BellSouth, is entitled to receive any payments from third party publishers for US LEC's SLI.

23. Moreover, upon information and belief, BellSouth maintains US LEC's SLI in BellSouth's directory databases in the same manner as it maintains BellSouth's own SLI. Since BellSouth has already incurred the costs for developing and maintaining its own SLI and for providing that SLI to third party publishers, and since BellSouth will provide SLI to third party publishers without making any distinction between BellSouth's SLI and US LEC's SLI, there should be no need to modify BellSouth's systems in order to provide US LEC's SLI to third party

publishers along with BellSouth's SLI. If BellSouth has previously modified its systems in order to avoid providing US LEC's SLI to third party publishers along with BellSouth's SLI, thereby frustrating US LEC's right to have its SLI provided to third party publishers together with BellSouth's SLI, then BellSouth should bear any cost associated with undoing those modifications. It would be inequitable to require US LEC to bear any cost associated with reversing modifications to BellSouth's systems that were made in order to deny US LEC its rights.

24. Finally, upon information and belief, BellSouth's costs of modifying its systems in order to provide CLECs' SLI to third party publishers together with BellSouth's SLI have already been reimbursed by a group of third party publishers and other CLECs. To require US LEC to reimburse those same costs would result in double recovery by BellSouth.

ISSUE THREE

25. US LEC incorporates by reference herein paragraphs 1-24 of this Response.

26. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.7.2 of the Interconnection Agreement.

27. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Section 1.7.2 of the Interconnection Agreement.

28. Section 251(c)(2) of the Telecommunications Act requires incumbent LECs such as BellSouth "to provide, for the facilities and equipment of any requesting telecommunications carrier,

interconnection with the local exchange carrier's network ... (B) at any technically feasible point within the carrier's network."

29. The FCC has held that § 251(c)(2) grants competing carriers such as US LEC the right to choose the points of interconnection. See Local Competition Order ¶ 172 ("section 251(c)(2) allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carrier's costs of, among other things, transport and termination of traffic"); see also Local Competition Order, ¶ 220, n. 464 ("requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2).") No such right is given to the incumbent carrier, only to new entrants.

30. US LEC's right to designate the point of interconnection so as to lower its costs, including its cost of transport and termination of traffic, includes the right to designate the point of interconnection associated with traffic that originates on BellSouth's network, and terminates on US LEC's network.

31. BellSouth may want to designate its end offices as the point of interconnection for traffic it originates. Such a designation would force US LEC to build facilities to each BellSouth end office or to pay to transport BellSouth traffic to US LEC's network. This position would be inconsistent with the Local Competition Order and the 1996 Act. US LEC is not required to extend its facilities to each BellSouth end office; instead, BellSouth is obligated to provide interconnection for US LEC facilities at points designated by US LEC.

32. Therefore, US LEC states that BellSouth's proposal not only contradicts prevailing law but also would force US LEC to bear unnecessary costs and/or would create an inefficient network structure.

ISSUE FOUR

33. US LEC incorporates by reference herein paragraphs 1-32 of this Response.

34. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.8.4 of the Interconnection Agreement.

35. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Section 1.8.4 of the Interconnection Agreement.

36. The TRA should resolve this issue by directing the parties to incorporate US LEC's proposed language into their interconnection agreement.

ISSUE FIVE

37. US LEC incorporates by reference herein paragraphs 1-36 of this Response.

38. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.8.6 of the Interconnection Agreement.

39. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Section 1.8.6 of the Interconnection Agreement. US LEC further refers to Issue No. 3, *supra*, and incorporates that discussion herein by reference.

40. As stated in response to Issue No. 3, § 251(c)(2) gives US LEC the right to interconnect with BellSouth's network "at any technically feasible point," but no provision of law authorizes BellSouth to select the point of interconnection ("POI") at which it will deliver traffic to US LEC for termination on US LEC's network. BellSouth may deliver traffic to US LEC at the POI or POIs chosen by US LEC, or US LEC will agree to permit BellSouth to transport its traffic directly to US LEC's switch. Having no right to select the POI, BellSouth cannot require US LEC to provide facilities to transport BellSouth-originated traffic from a POI selected by BellSouth.²

ISSUE SIX

41. US LEC incorporates by reference herein paragraphs 1-40 of this Response.

42. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.9.3 of the Interconnection Agreement.

43. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Section 1.9.3 of the Interconnection Agreement but that BellSouth inaccurately identifies this language as language proposed for "section 6.1.6." (See Petition at 9).

² To the extent that US LEC may for technical reasons need to interconnect at specific points in BellSouth's network or more than one POI in order to receive traffic from some portions of BellSouth's network or to receive transit traffic originating on third party carriers' networks and delivered by them to BellSouth for retransmission to US LEC's network, US LEC may need to designate more than one POI and/or may need to designate a particular point on BellSouth's network as its POI. US LEC may also need to provide facilities to transport traffic from the POI(s) so designated. BellSouth cannot, however, be permitted to dictate the location of those POIs and to require US LEC to provide transport facilities from POIs not designated by US LEC.

44. US LEC proposes that the parties employ a composite rate for the transport and termination of traffic that is based upon average or typical traffic delivery patterns and not upon the actual switching and transport functions provided on a call-by-call basis with an annual redetermination of the composite rate based upon changes in such average or typical traffic delivery patterns. Such an approach, which would employ a single rate-per-minute of interconnected traffic, would vastly simplify the computation of reciprocal compensation payments, as opposed to requiring the computation of a separate payment for each delivered call based upon the actual routing of that call, and would not materially affect the total compensation paid by either party to the other for the transport and termination of traffic in the aggregate. Moreover, the specific composite rate formula proposed by US LEC would, for traffic delivered to BellSouth by US LEC, favor BellSouth because it includes a charge for tandem switching that would apply whether or not tandem switching is required for a particular call or minute of traffic. As a result, US LEC's aggregate payments of reciprocal compensation to BellSouth would be greater under US LEC's proposal than under BellSouth's proposal to the extent that US LEC delivers traffic directly to BellSouth end offices for termination at those end offices. US LEC believes that the savings resulting from the administrative simplicity of its proposal would offset any additional reciprocal compensation payments to BellSouth resulting from such an arrangement and notes that BellSouth would also realize those administrative savings without the risk of paying more reciprocal compensation to US LEC than would be due under BellSouth's elemental rate proposal because, as discussed in connection with

NEW ISSUE TEN, US LEC is entitled to be paid the tandem switching rate element for all traffic that it terminates for BellSouth in any event.

45. US LEC further refers to the discussion of NEW ISSUE TEN, *infra*, and incorporates that discussion by reference herein.

ISSUE SEVEN

46. US LEC incorporates by reference herein paragraphs 1-45 of this Response.

47. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Sections 6.1 -- 6.4 of the Interconnection Agreement.

48. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Sections 6.1 -- 6.4 of the Interconnection Agreement.

49. US LEC further states that section 251(b)(5) of the 1996 Act requires ILECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC has limited the application of this provision to "local telecommunications traffic." 47 C.F.R. § 51.701(a).

50. In its Petition, BellSouth relies on the FCC's declaratory ruling in *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 ("*ISP Declaratory Ruling*"). BellSouth fails to note that the *ISP Declaratory Ruling* explicitly authorizes state TRAs to determine in arbitrations that reciprocal compensation must be paid for ISP-bound traffic, relying instead on the FCC's determination that ISP-bound traffic

is predominantly interstate in nature. As the TRA is well aware, the FCC's determination that ISP-bound traffic is predominantly interstate was vacated and remanded by the United States Court of Appeals for the District of Columbia Circuit in *Bell Atlantic Telephone Companies v. FCC*, Case No. 99-1094, 2000 WL 273383 (D.C. Cir. 2000).

51. In *Bell Atlantic*, the Court found that the FCC had "not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as 'terminat[ing] ... local telecommunications traffic,'" subject to the statutory obligation to pay reciprocal compensation. The Court also criticized the FCC's use of the traditional end-to-end analysis in its ruling. Finally, the Court found that the FCC did not satisfactorily explain why calls do not terminate at the ISP and why "an ISP is not, for the purposes of reciprocal compensation, simply a communications-intensive business end user selling a product to other consumers and end users."

52. The Court's holding supports US LEC's argument that there is a clear distinction between analyzing the jurisdiction of ISP-bound traffic and assessing how that traffic should be treated for reciprocal compensation purposes.

53. The Court's decision vacates and remands the FCC's determination that calls to ISPs are not eligible for reciprocal compensation under the 1996 Act. Until the FCC addresses the issue on remand, the Court's decision brings ISP-bound calls back within the ILEC's statutory obligation to pay reciprocal compensation under section 251(b)(5), and clearly undercuts BellSouth's arguments.

54. State commissions have authority to entertain disputes over compensation for ISP-bound traffic, and, more importantly, they may order in arbitrations that reciprocal compensation be paid

for the transport and termination of such traffic. *See ISP Declaratory Ruling*, CC Docket Nos. 96-98 and 99-68.

55. This TRA has previously determined in four arbitration proceedings that reciprocal compensation should be paid for ISP-bound traffic pending a final determination of the issue by the FCC. *Petition of ITC Delta^Com Communications, Inc.*, Docket No. 99-00430, *Petition of NEXTLINK Tennessee, Inc. for Arbitration*, Docket No. 98-00173, and *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South*, Docket No. 99-00797.

56. US LEC further states that the definition of Local Traffic in the parties' interconnection agreement should not explicitly exclude IP Telephony. Alternatively, US LEC would agree to a provision stating that the parties will treat IP telephony in accordance with any subsequent decision of the FCC concerning the nature of this traffic.

ISSUE EIGHT

57. US LEC incorporates by reference herein paragraphs 1-56 of this Response.

58. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 6.2 of the Interconnection Agreement.

59. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Section 6.1.3 of the Interconnection Agreement.

60. US LEC further states that the heart of this controversy is whether US LEC's ability to assign NPA/NXXs as it sees fit should be subject to BellSouth's control. Granting BellSouth control over US LEC's operations in such a fashion would permit BellSouth to control significant aspects of US LEC's product planning and market development and would impede US LEC's ability to compete with BellSouth by differentiating its services from those offered by BellSouth. No law authorizes BellSouth to exert such control over US LEC's operations.

61. US LEC further states that the public benefits of US LEC's position are enormous. The United States is facing numbering exhaust problems which are exacerbated by the current practice of assigning each CLEC an NPA/NXX for each rate center. US LEC's approach would help alleviate the problem of numbering exhaust by being able to assign an NPA/NXX to customers located in different rate centers, while BellSouth's position would result in continued waste of scarce NXX resources.

ISSUE NINE

62. US LEC incorporates by reference herein paragraphs 1-61 of this Response.

63. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 6.4 of the Interconnection Agreement.

64. **US LEC's position:** US LEC admits that BellSouth accurately states its proposed language for Attachment 3, Section 6.5 of the Interconnection Agreement. The only difference between BellSouth's proposed language and US LEC's proposed language on this point is that US

LEC's proposed language would treat ISP-bound traffic as "local traffic" for purposes of computing the PLU. US LEC submits that the TRA should adopt US LEC's proposed language on this issue for the same reason that it should adopt US LEC's position on Issue Seven and refers to the discussion regarding Issue Seven (discussion of local traffic and ISP), *supra*, and incorporates that discussion herein by reference.

65. US LEC further states that any allegations of the Petition not specifically admitted herein are denied.

NEW ISSUE TEN

66. US LEC incorporates by reference herein paragraphs 1-65 of this Response.

67. US LEC further states a new issue for determination:

Is US LEC entitled to be paid reciprocal compensation for the transport and termination of traffic at a rate that includes the tandem switching rate element based upon the fact that US LEC's switch serves a geographic area comparable to the area served by a BellSouth tandem as provided in 47 CFR § 51.711(a)(3)?

68. This issue appears to be subsumed within BellSouth's statement of Issue Six. In its statement of its position on that issue, BellSouth argues that "[u]nder no circumstances should an [sic] CLEC be entitled to an elemental rate for a function that the CLEC's network does not perform." While BellSouth has not clearly stated its position in its Petition, US LEC understands this to mean that BellSouth believes that US LEC should not be compensated at a rate that includes the tandem switching rate element unless US LEC's switch functions precisely like BellSouth's tandem switches.

69. BellSouth's position is contrary to the FCC's determination in 47 CFR § 51.711(a)(3) that CLECs should be compensated for tandem switching if their switches cover a geographic area comparable to the area covered by an ILEC's tandem, regardless of the precise functionality of the switch. Section 51.711(a)(3) provides unequivocally:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

70. BellSouth's position is that if US LEC's switch is not utilized in precisely the same manner as BellSouth's tandems, then US LEC should not be compensated for its use at the tandem rate. Basically, BellSouth believes that only tandem functionality matters, not geographic comparability. This position is in direct contradiction to Section 51.711(a)(3).

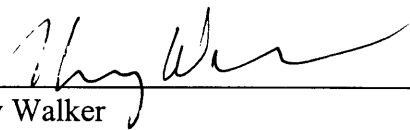
71. US LEC's switch serves an area comparable to the area served by a BellSouth tandem switch. Accordingly, US LEC is entitled to be compensated for the transport and termination of BellSouth-originated traffic at a rate that includes the tandem switching rate element.

WHEREFORE, US LEC respectfully requests that the TRA arbitrate the issues set forth herein and enter an Order directing that US LEC's positions on the issues raised herein and its proposed

language be incorporated into the Interconnection Agreement between US LEC and BellSouth. US LEC further requests that the TRA order such other and further relief as it may deem appropriate.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS &
BERRY, PLC

By:  _____
Henry Walker

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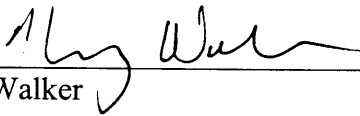
Attorney for US LEC OF TENNESSEE INC.

Dated: May 19, 2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via hand delivery, to the following counsel of record on this the 19 day of May, 2000.

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-3300


Henry Walker